

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Reorganization and Revision of)
Parts 1, 2, 21 and 94 of)
the Rules to Establish a New)
Part 101 Governing Terrestrial)
Microwave Fixed Radio Services)

DOCKET FILE COPY ORIGINAL

WT Docket No. 94-148

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REPLY COMMENTS

AT&T Corp. ("AT&T") respectfully submits the following reply comments in response to the Commission's Notice of Proposed Rulemaking ("NPRM"), FCC 94-314, released December 28, 1994.

AT&T, along with virtually all other commenters, generally supported the proposals in the NPRM to simplify and consolidate the domestic common carrier fixed radio rules in Part 21 (47 CFR Part 21) and the private operational fixed microwave rules in Part 94 (47 CFR Part 94) into a new Part 101 entitled Fixed Microwave Services. Most of those commenters made some additional suggestions for further improvements in Part 101.¹ The most detailed suggestions appear in the Joint Comments of NSMA and TIA.² The Joint

¹ The comments discussed in these reply comments and the abbreviations used to identify them are listed in the Appendix.

² ANS, Comsearch, CSI, Harris and MCI explicitly endorse the Joint Comments.

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Comments contain an Appendix with the full text of their proposed Part 101 and all additions to and deletions from the version in the NPRM.

The Joint Comments incorporate many AT&T proposals in their entirety.³ In other respects the Joint Comments address AT&T's concerns, but not in quite the same way. AT&T had proposed that § 101.103(d)(2)(i) require written confirmation within 48 hours of oral frequency coordination communications, in order to avoid disputes about what was said. The Joint Comments require written confirmation only upon request. Either of those approaches would be satisfactory.⁴

Both AT&T's comments and the Joint Comments contain equations, substituting for the one in the Commission's proposed § 101.143(b), governing the maximum Equivalent

³ Specifically, the Joint Comments contain AT&T's proposals regarding §§ 101.101, 101.103(d)(2)(ii), 101.103(d)(2)(xii), 101.115(b) and (c) (in substance, although the proposed table is set up somewhat differently), and 101.713(c) (placed instead in a proposed new § 101.21(d)). In addition, the Joint Comments (p. 16), as well as SBC (p. 6), agree with AT&T's position that a decision in CC Docket 93-2 to allow licensees in the Point-to-Point Microwave Service to commence construction upon filing of a license application, pursuant to certain conditions, should also be adopted in Part 101.

⁴ The Joint Comments do not contain AT&T's proposal that §§ 101.103(d)(2)(i) and (v) clearly provide for electronic communication. AT&T remains of the view that its proposal would obviate any concern that such communication is not a form of writing.

Isotropically Radiated Power (EIRP) of an antenna where the path length is shorter than the minimum path length specified in the table in § 101.143(a) for the particular frequency, 17 kilometers in the bands of concern to AT&T. Both of these formulations address the fact that the equation in the NPRM sharply reduces the available power where the path length is just under 17 kilometers, making such paths much less reliable and much more subject to interference. The equation in the Joint Comments, however, applies only where certain bandwidth and loading requirements are met, and even then makes the reduction in EIRP less sharp. AT&T's proposed equation is superior because it applies in all cases and makes the reduction in maximum EIRP gradual as path lengths become shorter.

One proposal made by AT&T but not reflected in the Joint Comments is that the frequency coordination procedures in § 101.103(d)(1) be amended to provide for notification to holders of special temporary authority who have communicated their interest in receiving such notifications. As AT&T showed, applicants may have no way of knowing about such holders because they are not using⁵ their authority at the

⁵ The proposal in the Joint Comments to substitute the word "operators" for "users" does not solve this problem because such holders do not appear to be "operators." The discussion in the Joint Comments of § 101.103(d)(1) does not explain this change in terminology and thus does not

time and place, and thus potential conflicts may not emerge until the application is put on Public Notice. AT&T's proposal is supported by Bell South (p. 6) and should be adopted.

The many other detailed language changes proposed in the Joint Comments are acceptable to AT&T, with one exception. Section 101.215 proposed in the Joint Comments contains elaborate requirements regarding station records. That section is explained in the text (p. 44) as retaining for the Fixed Microwave Service to be governed by new Part 101, the station record requirements applicable to Private Operational Fixed licensees under § 94.113. This proposal ignores that § 94.113 was amended, late in 1993, to delete everything except the tower lighting material. AT&T agrees that the tower lighting provisions in § 101.215(c) proposed in the Joint Comments should survive, but not the other proposed subsections of § 101.215.

In addition to the specifics discussed in these reply comments, many other commenters suggested other minor corrections, clarifications, consolidations and liberalizations on the basis that they furthered the

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indicate that it is intended to achieve the objective of AT&T's proposal.

Commission's goals underlying the NPRM. A few commenters, however, opposed proposals in the NPRM and instead urged that present provisions be retained.

TSGI and TDS oppose the Commission's proposal to delete the requirement that applications for Part 21 licenses state specifically the reasons why grant of the application would serve the public convenience and necessity.⁶ The NPRM explained (p. 5) that the reason for this deletion is that the public interest will generally be served by granting such applications, provided they meet all the other Commission rules and requirements. The Commission also noted that it can request a public interest showing whenever deemed necessary in any particular case (id.).⁷

TSGI opposes this on the basis that § 214 of the Communications Act (47 USC § 214) requires a public interest statement in a radio license application despite the Commission's finding that it is unnecessary. It is true that

⁶ The present requirements are in § 21.13(b)(4), applicable generally to Part 21, and § 21.706(a), governing applications for licenses in the Point-to-Point Microwave Service. The proposed replacing section, which does not require such a statement, is § 101.19.

⁷ Deletion of the requirement for a public interest showing was supported by many commenters: Air Touch (p. 3); Alltel (p. 2), DMC (p. 4), E. F. Johnson (p. 3), GTE (p. 12), LOCATE (p. 3), NYNEX (p. 2), RCCMC (p. 3) and SBC (p. 1). The version of § 101.19 in the Joint Comments preserves the Commission's deletion of this showing.

§ 214, and for that matter § 309(a) governing radio licenses (47 USC § 309(a)), require a Commission determination that granting applications governed by those provisions serve the public convenience and necessity. But there is nothing in those provisions requiring the Commission to insist upon a public interest statement in an application.

In addition to its argument based on the statute, TSGI claims that the public interest showing on which it insists will help prevent spectrum speculation (i.e., obtaining a license not for use but for sale to someone who needs the frequency) and spectrum warehousing (i.e., obtaining a license and holding it for use in the distant future). TSGI ignores that proposed § 101.63 requires that the station actually be constructed and in operation within a specified time and that proposed § 101.103(d)(2)(xii) requires release to someone who needs it of an unused frequency coordinated for future growth.⁸

⁸ The Joint Comments (p. 33) and those of API (p. 12), CCPR (p. 6) and GTE (p. 9) urged that the maximum time to complete construction and place the station in operation be 18 months rather than 12 months as proposed in the NPRM. AT&T joins in that position. The Joint Comments (proposed § 101.103(d)(2)(xii)) and AT&T (p. 5) proposed that the ability to hold an unused frequency for six months prior to release be eliminated. In any event, both the rules as proposed in the NPRM, and as these commenters suggest be modified, take care of the alleged spectrum speculation and warehousing problems. There is no need for a public interest showing to address this matter. DMC made this point in supporting the proposed deletion of a showing of financial ability: "the build-out requirement is a more

TSGI also opposes the proposed elimination of the requirement in present § 21.15(e)(1) that applicants submit a showing of their general maintenance procedures.⁹ The Commission had asked for comment on this issue, including replacing requiring this showing with a general rule describing the licensee's responsibilities for maintenance such as in present § 22.305¹⁰ (NPRM ¶ 11). There was wide support for this Commission proposal.¹¹ As DMC pointed out, this and other showings proposed to be eliminated "have outlived their usefulness" (p. 3). The basis of TSGI's opposition is that otherwise there would be "no rule requiring the licensee to maintain its system" which would be enforced by the Commission (p. 7). TSGI ignores that the Commission proposed, and the supporting comments endorsed, a rule of general applicability.

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effective tool for assuring that assigned frequencies are put to use" (p. 3).

⁹ Proposed new § 101.19 omits this item.

¹⁰ The Commission's reference to § 22.205 is in error.

¹¹ Alltel (p. 5), DMC (pp. 3-4), NYNEX (p. 2), RCCMC (p. 3), SBC (p. 2) and TDS (p. 2). SBC specifically endorses using the § 22.305 precedent. The version of § 101.19 in the Joint Comments deletes this requirement but does not contain any rule of general applicability.

- 8 -

CONCLUSION

The Commission should adopt the new Part 101
proposed in the NPRM with the modifications proposed by AT&T.

Respectfully submitted,

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APPENDIX

Air Touch Communications, Inc. - Air Touch

Alltel Mobile Corporation - Alltel

Alcatel Network Systems, Inc. - ANS

American Petroleum Institute - API

BellSouth Corporation et al. - BellSouth

Cellular Communications of Puerto Rico, Inc. - CCPR

Comsearch

C.S.I. Telecommunications - CSI

Digital Microwave Corporation - DMC

E.F. Johnson Company - E.F. Johnson

GTE Service Corporation - GTE

Harris Corporation - Farinon Division - Harris

Local Area Telecommunications, Inc. - LOCATE

MCI Telecommunications Corporation - MCI

National Spectrum Managers Association, Inc. - NSMA

NYNEX Corporation - NYNEX

Rural Common Carrier Microwave Coalition - RCCMC

SBC Communications, Inc. - SBC

Telecom Services Group, Inc. - TSGI

Telephone and Data Systems, Inc. - TDS

Fixed Point-to-Point Communications Section, Network Equipment
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